



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 19, 1994

Mr. Burton F. Raiford
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR94-558

Dear Mr. Raiford:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 26905.

The Texas Department of Human Services (the "department") has received a request for information concerning an investigation of alleged drug use by department employees. The department will provide the requested information, with the exception of the names of the employees involved in the alleged drug use and the type of drugs involved. The department asserts that this information is confidential and must be withheld from public disclosure under section 552.101 of the act.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

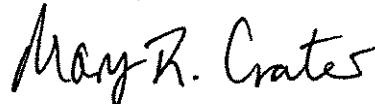
information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)). In *Industrial Foundation*, the court considered the following kinds of information to be intimate and embarrassing: information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

We have reviewed the background information you submitted. We understand that the individuals at issue are alleged to have engaged in the possession and use of illegal drugs while on the job. Generally, information about public employees' job performance or the reasons for their dismissal, demotion, promotion, or resignation is of legitimate public interest. Open Records Decision Nos. 444 (1986); 405 (1983). While drug use may be intimate and embarrassing, a public employee's possession or use of illegal drugs on the job is of legitimate public interest because it affects job performance and may involve the commission of crimes in the public workplace. *See generally* Open Records Decision No. 579 (1990) at 3 (the public has a legitimate interest in the on-the-job conduct of public employees). Furthermore, we believe that the type of drugs alleged to have been used or possessed by public employees while on the job is also of legitimate public interest. *Id.* Therefore, we conclude that the information you wish to withhold is not confidential under section 552.101 and must be released.

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

Ref.: ID# 26905

Enclosures: Submitted documents

cc: Mr. Larry Kerr
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